

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs at Knoxville December 20, 2006

**STATE OF TENNESSEE v. LAQUETTA MONIQUE MARSH**

**Appeal from the Criminal Court for Sumner County**  
**No. 198-2002     Jane Wheatcraft, Judge**

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**No. M2006-01126-CCA-R3-CD - Filed January 23, 2007**

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In August 2002, the defendant, Laquetta Monique Marsh, pled guilty to one count of identity theft, a Class D felony; four counts of forgery, a Class E felony; and driving on a revoked license, a Class B misdemeanor. She received an effective total sentence of six years on probation. In April 2006, the trial court revoked the defendant's probation on the basis that she had violated the terms and conditions of her probation. The defendant appeals her probation revocation, arguing that the trial court failed to exercise conscientious and intelligent judgment. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which DAVID H. WELLES and JAMES CURWOOD WITT, JR., JJ., joined.

David Allen Doyle, District Public Defender, for appellant, Laquetta Monique Marsh.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel E. Willis, Assistant Attorney General; Lawrence Ray Whitley, District Attorney General; and Thomas B. Dean, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The defendant was indicted in Sumner County for two counts of passing forged checks, six counts of forgery, one count of criminal impersonation, one count of identity theft, one count of driving on a revoked license, one count of possession of marijuana, and one count of violation of the seatbelt law. Pursuant to a plea agreement with the state, the defendant received a four-year sentence on the identity theft conviction, to run concurrently with a six-month sentence on the driving on a revoked license conviction. She received two-year sentences on four forgery convictions, to run concurrently to each other but consecutively to the four-year sentence. The remaining charges were dismissed.

The conditions of the defendant's probation included paying restitution in the amount of \$1153.99, DNA testing, and drug and alcohol assessment. At some point after the defendant's convictions, her probation was transferred from Sumner County to Davidson County. The defendant was also simultaneously on probation for other convictions in other counties, including Davidson County. In February 2004, the defendant's probation officer, John Perry, filed a probation violation warrant citing four violations: (1) that she was charged with possession of cocaine with the intent to sell; (2) that she failed to report to her probation officer since October 2003; (3) that she failed to verify her employment since October 2003; and (4) that she could not be located at her given address since October 2003. For reasons unknown, the warrant was not served on the defendant until January 20, 2006.

At the probation revocation hearing, Davidson County probation officer John Perry testified that he supervised the defendant on her probation for the Sumner County convictions. He explained that the defendant was arrested on October 22, 2003, for possession of one-half gram or more of cocaine with the intent to sell, though he acknowledged that the charge was retired and the defendant was not convicted. He said that, according to his recollection, the defendant did not report her arrest to him. He said the defendant had failed to report to him since October 2003, which meant that she also failed to verify her employment and substance abuse assessment, which was required under the terms of her probation. He said that he attempted to contact the defendant by mail and by telephone but that the defendant did not respond. He said the defendant also violated her probation by not paying any money toward fees, restitution, and court costs. Mr. Perry sent the warrant to the probation office's absconder unit, and his supervision of the defendant ended.

On cross-examination, Mr. Perry testified that he did not remember telling the defendant that she did not have to report to him after her arrest in October 2003. He said he did not remember speaking to the defendant about that arrest at all, and he could not remember when he found out about the arrest. He said he waited until February to file the warrant because he wanted to give the defendant an opportunity to report to him.

Mr. Perry testified that he worked in the same office as Helen Howard, another Davidson County probation officer. He acknowledged that after he had filed the warrant against the defendant, he saw the defendant at his workplace on a few occasions. He said he assumed she was reporting to another officer for a different probation but never inquired further because by that time, he was no longer supervising her. He said he was unaware at the time that the warrant had not yet been served. He said he did not inform the absconder unit that he saw the defendant; he said it was not his responsibility to do so. He said he was unaware that the defendant had been taking alcohol and drug abuse classes.

Helen Howard testified that she supervised the defendant beginning in July 2004 on a Davidson County conviction. She said the defendant reported to her about four times per month until March 2005. She last saw the defendant on March 16, 2005. She said that the defendant was arrested for violating her Davidson County probation and that her probation was reinstated in

January 2006. The defendant did not report to her after January 2006 because it was at that time that the defendant was arrested and jailed for the Sumner County probation violation.

The defendant testified that she was a thirty-two-year-old high school graduate and lived in Nashville with her aunt and her five children. She said she was pregnant with her sixth child at the time of the revocation hearing. She said John Perry was her probation officer after her probation was transferred from Sumner County to Davidson County. She acknowledged being arrested for possession of cocaine with the intent to sell in 2003, but she claimed that she telephoned Mr. Perry and informed him of the arrest after she made bond. She said some of her family members also called Mr. Perry. She said Mr. Perry told her that “by it being a Class A or Class B [felony], he had to violate” her. She said that because she thought Mr. Perry already reported her for probation violation, she did not report to him after October 2003.

The defendant testified that she was on probation for four different cases when she received the Sumner County probation. The defendant related a confusing history regarding her various arrests and probation violations. At some point, she was incarcerated in Davidson County for four or five months, until June or July 2004, after which she was placed on intensive probation and was supervised by Ms. Howard. She said she stopped reporting to Ms. Howard in March 2005 because she “had a real bad drug problem.” She was later arrested for probation violation and spent four more months in jail. She said she did not receive drug treatment during this time. She said that in January 2006, near the time that she was served with the warrant in the present case, her Davidson County probation supervised by Ms. Howard was reinstated.

The defendant testified that when she was reporting to Ms. Howard, they talked about her various probations. She said that at one point, Ms. Howard mentioned that she should go see Mr. Perry about her other probation but that “nothing ever came back up again.” The defendant also said that she was previously employed and that she was attending alcohol and drug assessment weekly until her cocaine possession charge.

On cross-examination, the defendant admitted that she was most recently arrested in Davidson County in October 2005 and that she was using cocaine at the time. She admitted that she did not report to Mr. Perry after October 2003, did not verify her employment to him, did not pay restitution, and did not carry out other obligations of her probation. She said she did not receive any of the letters or telephone calls from Mr. Perry. She said she did not pay restitution because she could not afford it.

On rebuttal, Mr. Perry testified that he did not recall having a conversation with the defendant about her October 2003 cocaine charge. He said he did not usually talk about classes of violations with his clients and that the statement the defendant claimed he told her does not sound like something he would say. He said it was possible that the case file, which was no longer in his possession, would reflect that the defendant did call him in October 2003 regarding her arrest.

The trial court found by a preponderance of the evidence that the defendant violated the terms of her probation. The court noted that the defendant admitted failing to report to her probation officer, failing to verify her employment status, using illegal drugs, and failing to pay restitution. The court also found that the defendant had not been living at her reported address because Mr. Perry had not been able to get in touch with her there. The court revoked the defendant's probation and ordered her to serve the remainder of her sentences in confinement.

The defendant appeals the judgment revoking her probation. She contends that the trial court "failed to exercise conscientious and intelligent judgment" in revoking her probation. She argues that her probation should not be revoked because she has a drug problem and that "[t]hose who violate the law should be given an opportunity to rehabilitate themselves." The state responds that the trial court did not abuse its discretion in revoking the defendant's probation.

Relative to when a trial court may revoke probation and to the standard of review in an appeal of such an action, our supreme court has stated:

We take note that a trial judge may revoke a sentence of probation or a suspended sentence upon a finding that the defendant has violated the conditions of his probation or suspended sentence by a preponderance of the evidence. T.C.A. § 40-35-311. The judgment of the trial court in this regard will not be disturbed on appeal unless it appears that there has been an abuse of discretion. State v. Williamson, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981). In order for a reviewing court to be warranted in finding an abuse of discretion in a probation revocation case, it must be established that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred. State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment. State v. Milton, 673 S.W.2d 555, 557 (Tenn. Crim. App. 1984).

State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

We conclude that the trial court did not abuse its discretion in revoking the defendant's probation. The defendant does not dispute the trial court's finding that she violated the terms of her probation. In fact, the defendant readily admitted at the revocation hearing that she stopped reporting to her probation officer in October 2003, that she did not verify her employment status, that she did not pay restitution as required of her, and that she used cocaine while on probation. The only fact in dispute was whether the defendant reported her October 2003 arrest to Mr. Perry. The trial court did not make a finding of fact as to this issue but did find that the defendant violated her probation

in various other ways. Even if we accredit the defendant's testimony that she reported her arrest to Mr. Perry and that he told her he was going to report her for violating her probation, the defendant was not excused from the requirement to report to her probation officer. The record supports the trial court's findings that the defendant violated the terms of her probation.

We disagree with the defendant that the trial court did not exercise conscientious and intelligent judgment in revoking probation. It is true, as the defendant points out, that "those who violate society's rules of conduct should, in proper cases, be given an opportunity to rehabilitate themselves and to be restored to useful and productive citizenship." Stiller v. State, 516 S.W.2d 617, 620 (Tenn. 1974). However, the defendant has been given multiple opportunities to rehabilitate herself outside of confinement. She has been on probation various times for various offenses committed in different counties. One of the terms of her probation in the present case was to seek alcohol and drug abuse treatment. Still, she has not ceased her drug abuse and other criminal behavior. It was within the trial court's discretion to order the defendant to serve the remainder of her sentence in confinement, and the trial court did not abuse that discretion in doing so.

Based on the foregoing and the record as a whole, we affirm the judgment of the trial court.

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JOSEPH M. TIPTON, PRESIDING JUDGE